

# Exhibit 16

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE  
PAGES 131 - 143 HAVE BEEN MARKED "CONFIDENTIAL"

WEBLOYALTY.COM, INC.,                     )  
   )  
   ) Plaintiff,                     )  
   ) Civil Action  
v.   ) No. 04-0090 (KAJ)  
   )  
CONSUMER INNOVATIONS, LLC,               )  
   )  
   ) Defendants.                )

Videotape deposition of MATTHEW GORDON taken pursuant to notice at the law offices of Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, Wilmington, Delaware, beginning at 8:00 a.m. on Tuesday, July 27, 2004, before Lucinda M. Reeder, Registered Diplomate Reporter and Notary Public.

APPEARANCES:

STEVEN LIEBERMAN, ESQ.  
ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
1425 K Street, N. W. - Suite 800  
Washington, D.C. 10005  
for the Plaintiff

DANIEL A. GRIFFITH, ESQ.  
MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN  
1220 Market Street - 5th Floor  
Wilmington, Delaware 19801  
for the Defendant

ALSO PRESENT:

JASON EDWARDS

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WILCOX & FETZER, LTD.  
1330 King Street - Wilmington, Delaware 19801  
(302) 655-0477

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1 Q. And describe for me the general process that  
2 you used in designing the sell pages.

3 A. I -- typically, when I would design a page, I  
4 would sketch out something on a piece of paper of how  
5 I hoped the layout should look. I then wrote the text  
6 copy. And depending on the sell page we were looking  
7 at by product, I would gather the graphics that we  
8 might have from our benefit providers or we would talk  
9 about with our graphic designers what kind of -- what  
10 kind of graphics we would like to be displayed on the  
11 page.

12 Q. And what would you do after that?

13 A. I'm not sure I understand.

14 Q. Well, you said you would sketch the layouts.  
15 You would write text copy. You'd gather graphics from  
16 benefits providers or your own graphics people. What  
17 happened next?

18 A. Okay. I would supply that to our independent  
19 contractor who was HungryMind. They would code it  
20 together in HTML and get it ready for the web. We  
21 would make any revisions if necessary. And that would  
22 be it.

23 Q. Let me show you what has previously been marked  
24 for identification as Webloyalty Deposition Exhibit 4.

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1 Q. Did you do any research to ascertain what kind  
2 of creatives Webloyalty was using for the Walter Drake  
3 post-transaction marketing?

4 A. I ran through the whole process from Walter  
5 Drake.

6 Q. What does that mean?

7 A. I purchased something from Walter Drake. I  
8 then enrolled in the Webloyalty service.

9 Q. When did you do that?

10 A. November, December.

11 Q. What name did you use?

12 A. My name.

13 Q. Did you print out the various screen shots from  
14 this process?

15 A. I didn't.

16 Q. Did you store them on your computer?

17 A. I didn't.

18 Q. How did you save them?

19 A. I didn't.

20 Q. Did you take notes?

21 A. I don't think so.

22 Q. Do you have a photographic memory?

23 A. No.

24 Q. Do you have sort of an extraordinarily good

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1 memory?

2 MR. GRIFFITH: Objection to the form.

3 Q. Or just sort of your average memory?

4 MR. GRIFFITH: Objection to the form  
5 again.

6 A. I would say I have an average memory.

7 Q. Did you -- withdrawn. Which club did you join  
8 for -- from Webloyalty?

9 A. Reservation Rewards.

10 Q. That's the Webloyalty travel program?

11 A. I guess it's their travel program because they  
12 have other components in it that's nontravel related,  
13 I think.

14 Q. Did you use any of the services?

15 A. I didn't.

16 Q. Why did you run through the Walter Drake post-  
17 transaction process with Webloyalty and join  
18 Reservation Rewards?

19 A. I wanted to see how the process worked. I  
20 wanted to see the creative that was approved by Walter  
21 Drake. I wanted to see what kind of messages were  
22 sent around. I wanted to do a competitive analysis on  
23 the program itself of Webloyalty.

24 Q. Were there any documents generated by your

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1 purchasing of something at the Walter Drake site and  
2 then joining Reservation Rewards?

3 A. There was, I think -- I got a welcome e-mail.

4 Q. Did you keep that?

5 A. No.

6 MR. LIEBERMAN: We have to flip the tape.

7 THE VIDEOGRAPHER: We're going off the  
8 record at approximately 8:55 a.m.

9 -- -- -- --

10 THE VIDEOGRAPHER: We're back on the  
11 record at approximately 8:59 a.m.

12 BY MR. LIEBERMAN:

13 Q. So are there any documents that exist in CI's  
14 files or your files -- by that I include computers --  
15 reflecting your running through the Walter Drake  
16 process, obtaining the Webloyalty post-transaction  
17 banner and sell page, and then the various  
18 communications with Webloyalty regarding Reservation  
19 Rewards?

20 A. No, there wasn't. I think they sent two more  
21 follow-up e-mails over the course of time I was  
22 enrolled in the program. I would read through it and  
23 I would delete it.

24 Q. Why didn't you keep copies of any of those

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1 documents or screen shots?

2 A. Just anal about how I conserve information,  
3 space on my computer.

4 Q. Did you print out the Webloyalty sell page at  
5 any point in time?

6 A. No.

7 Q. Did you store it at any point in time in your  
8 computer?

9 A. No, I didn't.

10 Q. Do you remember the precise date that you ran  
11 through this?

12 A. November, December of 2003.

13 Q. Was it before the December 17 IO?

14 A. I can't recall for sure.

15 Q. Tell me about this implementation phone call.  
16 Was that the first communication you had directly with  
17 Walter Drake?

18 A. Yes.

19 Q. Who was on the call?

20 A. Myself, Kate Heslin, and I believe the only  
21 other participant was Barbara Krystin from Walter  
22 Drake. I don't know how to pronounce her name.  
23 Krystin.

24 Q. About when did that take place?

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1 Q. Yes.

2 A. I did.

3 Q. Describe the process of how you designed  
4 Exhibit 3.

5 A. Well, I took the meat of our program, which is  
6 the core benefits of our program, laid it out on a  
7 piece of paper, drew out a sketch of what I think the  
8 program should look like based on creatives that I had  
9 produced in the past and filled in the introduction  
10 copy and the closing copy, put on the membership  
11 terms, and put on the post fields for the consumer to  
12 put on the information. Sent it all over to our  
13 graphics designer. They coded it in HTML. Went  
14 through a couple of revisions and came up with this  
15 creative.

16 Q. How did you send this material to your graphics  
17 designer?

18 A. I sent the text for it via Word document, and  
19 we probably talked about the layouts over the phone.

20 Q. Did you send them a sketch of the layouts, do  
21 you think?

22 A. No.

23 Q. What happened to the Word document that you  
24 sent to the designers?



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1 A. I think we provided it to you.

2 Q. Could you look through Exhibit 2, which is a  
3 complete set of the documents provided by CI in this  
4 case, and let me know if that text document is there?

5 A. Yes, it is here.

6 Q. What's the Bates number on it?

7 A. C1032.

8 Q. Did you have any discussions with the graphics  
9 designer about the Webloyalty Reservation Rewards  
10 enrollment or sell page?

11 A. No.

12 Q. The graphics designer that you've sent this  
13 text to was the HungryMind people?

14 A. Correct.

15 Q. Which people at HungryMind?

16 A. Hank Pantier and Jeffrey Lindermier.

17 Q. Did you tell the people from HungryMind that  
18 you wanted them to make the page look like the  
19 Webloyalty Reservation Rewards page?

20 A. No, I didn't.

21 Q. Did you tell them to take a look at the  
22 Webloyalty Reservation Rewards page?

23 A. No, I didn't.

24 Q. Did they ever tell you that they had looked at

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1 the page?

2 A. We went through the process to go through how  
3 we would transfer the data back and forth. But I  
4 don't think specifically that they looked at the page.  
5 But we talked about what would happen with the process  
6 of it, meaning, that someone would pop up, see an  
7 offer; if they clicked "yes," a transaction would  
8 happen behind the scenes that would report information  
9 back to Walter Drake that someone wanted to enroll in  
10 a program. Based on that, the billing information  
11 would be released back to us.

12 Q. Right. Is it -- withdrawn. In the  
13 communications you had with the HungryMind people, did  
14 you ever mention to them the Webloyalty Reservation  
15 Rewards sell or enrollment page?

16 A. I doubt it.

17 Q. Did they ever indicate to you that they were  
18 going to look at that page?

19 A. No.

20 Q. Did you ever tell them to go look at the page?

21 A. No.

22 Q. Did you ever tell them I'd like to you make our  
23 page, meaning CI's page, look like the Webloyalty  
24 page?

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1 A. No, I didn't.

2 Q. If they had said to you, Matt, I'd like to make  
3 the Traveler Innovations sell page look just like the  
4 Webloyalty page, what would your reaction have been?

5 MR. GRIFFITH: Objection to the form.

6 It's a hypothetical --

7 A. I don't know.

8 Q. Well, how would you have reacted to that?

9 MR. GRIFFITH: Objection to the form. He  
10 just answered that.

11 A. It wouldn't have happened.

12 Q. Why not?

13 A. I don't know why it wouldn't have happened. It  
14 wouldn't have happened.

15 Q. Why wouldn't it have happened?

16 MR. GRIFFITH: Objection to the form.

17 Again, calls for speculation.

18 A. Because that's not what their -- their job is  
19 to design the creatives with my direction. They

20 wouldn't ask -- give direction to me on how to do it.

21 MR. LIEBERMAN: Can I have that back  
22 please?

23 (The reporter read as requested.)

24 BY MR. LIEBERMAN:

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1 MR. GRIFFITH: Objection to the form.

2 A. Can you repeat that?

3 MR. LIEBERMAN: Read it back, please.

4 (The reporter read as requested.)

5 THE WITNESS: Yes.

6 BY MR. LIEBERMAN:

7 Q. How do you account for the fact that that  
8 paragraph magically appeared in the final version of  
9 the Traveler Innovations creative?

10 MR. GRIFFITH: Objection to the form.

11 A. It was just a modification that was made to the  
12 creative.

13 Q. Do you have any explanation as to how you put  
14 in a paragraph which exactly quoted the language from  
15 the Webloyalty creative, except with those two  
16 changes?

17 MR. GRIFFITH: I object to form. He  
18 already explained it.

19 A. No, I don't. This is the creative that we  
20 produced.

21 Q. This is the paragraph that came out of your  
22 head?

23 A. Correct.

24 Q. We now have seven examples of changes from your

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1 draft which was sent to List Services on December 19  
2 which mirror language from the Webloyalty creative,  
3 Exhibit 5. Correct?

4 MR. GRIFFITH: Objection to the form.  
5 They speak for themselves, the changes.

6 Q. You may answer.

7 A. It would seem that way, yes.

8 Q. Tell me about the next communication you had  
9 directly or indirectly with Walter Drake.

10 A. It was to notify them of the lawsuit and then  
11 request an insertion order that they had.

12 Q. And how did you communicate with them?

13 A. Well, I was advised by the counsel to try and  
14 get the insertion order that was signed between Walter  
15 Drake and List Services. I first began talking with  
16 Kate Heslin, trying to acquire it from Walter Drake.  
17 They looked through their records. They did not have  
18 a signed copy of a documentation between List Services  
19 and Walter Drake. I asked her if one existed. She  
20 said she wasn't sure. I needed to get the  
21 documentation, so we could gather our information. So  
22 I asked Kate if I could contact Barbara directly to  
23 try and acquire it, and then via phone calls with  
24 Barbara, I discussed it with her.

